

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE MCNEAL,

Plaintiff,

v.

B. EVERET, et al.,

Defendants.

No. 2:22-cv-1360 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. ECF Nos. 1, 2. This proceeding was referred to a magistrate judge by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1)(B).

A review of court records reveals that on at least three occasions, lawsuits filed by the plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed to state a claim upon which relief may be granted:

- McNeil v. Ervin, No. 2:07-cv-2240 LKK EFB (E.D. Cal. Mar. 3, 2010) (“Ervin”) (dismissed for failure to state a claim after defendants filed motion to dismiss) (Ervin, ECF Nos. 16, 30, 31);
- McNeal v. Dalu, No. 2:09-cv-1626 JAM KJM (E.D. Cal. June 29, 2010) (“Dalu”) dismissed for failure to state a claim) (Dalu, ECF Nos. 25, 26);

- 1 • McNeal v. Gonzalez, No. 1:14-cv-0030 BAM (E.D. Cal. Mar. 18, 2015)
2 (“Gonzalez”) (dismissed for failure to state a claim) (Gonzalez, ECF Nos. 20, 21),
3 and
4 • McNeal v. Cano, No. 1:14-cv-1767 DLB (E.D. Cal. Aug. 18, 2015) (“Cano”)
5 (dismissed for failure to follow court order and for failure to prosecute after initial
6 dismissal with leave to amend for failure to state a claim) (Cano, ECF Nos. 8 at 8;
7 9-11).¹

8 On July 20, 2020, in McNeal v. Roberts, No. 2:18-cv-2998 KJM AC P (“Roberts”),
9 plaintiff was accordingly found to be a three-strikes litigant within the meaning of 28 U.S.C. §
10 1915(g). See Roberts, ECF Nos. 7, 11-13 (recommendations, declaration, judgment and order).
11 Plaintiff is therefore precluded from proceeding in forma pauperis in this action unless he is
12 “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

13 The complaint does not allege any facts which suggest that plaintiff is under imminent
14 danger of serious physical injury. See ECF No. 1. Therefore, he must submit the appropriate
15 filing fee in order to proceed with this action.

16 Accordingly, IT IS HEREBY ORDERED that, within thirty days from the date of this
17 order, plaintiff shall submit the appropriate filing fee. Plaintiff’s failure to comply with this order
18 will result in a recommendation that this action be dismissed.

19 DATED: August 4, 2022

20 
21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE

23
24
25
26 ¹ See Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir. 2017) (holding dismissal with leave to
27 amend for failure to state claim followed by failure to amend constitutes strike under Section
28 1915(g)). The style of the dismissal or of the procedural posture is immaterial. See El Shaddai v.
 Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016).